DATO' SERI DIRAJA HJ ADNAN HJ YAAKOB v. UTUSAN MELAYU

HIGH COURT MALAYA, KUALA LUMPUR
YEOH WEE SIAM J
[CIVIL SUIT NO: 23 NCVC-62-12-2014]
28 JULY 2015

CIVIL PROCEDURE: *Locus standi – Action by elected representative – Whether plaintiff suing in personal capacity or official capacity as Menteri Besar of Pahang – Whether plaintiff had locus standi to institute and maintain action*

CIVIL PROCEDURE: *Striking out – Writ and statement of claim – Terms of 'Ketua Menteri' and 'Menteri Besar' inconsistently used in pleadings – Whether referred to position as Menteri Besar – Whether mere inconsistencies in terms used reasonable grounds to strike out claim – Rules of Court 2012, O. 18 r. 19(1)(b), (c) & O. 92 r. 4*

The plaintiff, the elected State Assembyman for Pelangai and Chief Minister ('Menteri Besar') of the State of Pahang, claimed for defamation against the defendant in respect of a newspaper article in Mingguan Malaysia. The defendant sought to strike out the plaintiff's writ and statement of claim and re-amended statement of claim (encl. 34) under O. 18 r. 19(1)(b), (c) and/or (d) and O. 92 r. 4 of the Rules of Court 2012 ('ROC'). The issue raised for the court's determination herein was whether the plaintiff had *locus standi* to institute and maintain the action against the defendant. The defendant submitted that the plaintiff, in his official capacity as the Menteri Besar of Pahang, lacked the *locus standi* to initiate and maintain the suit on the ground that the plaintiff was an elected representative which may be subjected to public criticism.

Held (dismissing defendant's application):

(1) Even though the plaintiff had used the terms 'Menteri Besar' and 'Ketua Menteri' interchangeably in his pleadings, when such terms were read together with the full contents of the impugned article, there was no doubt that the plaintiff was actually referring to his position as Menteri Besar in his pleadings. The inconsistencies in the use of the two terms were not strong or reasonable grounds to strike out the plaintiff's claim on a mere technicality of semantics and nomenclature. (paras 18 & 19)

(2) The plaintiff was cited as 'Adnan' or 'beliau' for about 20 times in the article. Further, only the plaintiff's name was cited without his official position. The plaintiff was thus suing the defendant in his personal capacity and not in his official capacity as the Menteri Besar of Pahang. In the circumstances, the plaintiff had *locus standi* to institute and maintain the action. (para 34)

(3) There was nothing specific shown by the defendant that the action should be struck out under O. 18 r. 19(1)(b), (c) and/or (d) of the ROC on the grounds that it was scandalous, frivolous or vexatious, may prejudice, embarrass or delay the fair trial of the action, or was otherwise an abuse of the process of the court. (para 36)

(4) The defendant's application for stay of the proceedings pending the defendant's appeal to the Court of Appeal was granted. There were special circumstances warranting a stay of the proceedings considering that the trial would commence and judgment delivered within a short period which may be before the outcome of the defendant's appeal, which would render the defendant's appeal nugatory and academic. (paras 38 & 41)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Berhad [1993] 4 CLJ 7 SC ***(refd)***

Derbyshire County Council v. Times Newspapers Ltd and Others [1993] 1 All ER 1011 ***(refd)***

Kerajaan Negeri Terengganu & Ors. v. Dr Syed Azman Syed Ahmad Nawawi & Ors (No. 2) [2013] 1 CLJ 124 HC ***(dist)***

Ng Hee Thong & Anor v. Public Bank Berhad [1995] 1 CLJ 609 CA ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 18 r. 19(1)(b), (c), (d), O. 41 r. 5(1), O. 92 r. 4

Other source(s) referred to:

Istilah Undang-Undang, 5th edn, p. 30

For the plaintiff - Americk Sidhu; M/s Americk Sidhu

For the defendant - M Reza Mohamad (Azhar Arman Ali & Elly Azreen Khalid with him); M/s Arman-Yunos

Reported by S Barathi

JUDGMENT

Yeoh Wee Siam J:

Enclosure 30

[1] This is the defendant's notice of application ("application") made under O. 18 r. 19(1) (b), (c), and/or (d), and O. 92 r. 4 of the Rules of Court 2012 ("ROC") to strike out the plaintiff's writ of summons ("writ") and re-amended statement of claim ("re-amended SOC") (encl. 34) and for costs.

Plaintiff's Claim

[2] The plaintiff is the elected State Assemblyman for Pelangai and Menteri Besar or Chief Minister ("Menteri Besar") of the State of Pahang ("Pahang") (para. 1 of plaintiff's re-amended SOC).

[3] The plaintiff's claim for defamation is in respect of the defendant's publication of the impugned article on 9 November 2014 in the Mingguan Malaysia" edition under the "Analisis Mingguan Bisik-Bisik Awang Selamat" column titled "Hebat Sangatkah Adnan". A

[4] *Vide* the writ and re-amended SOC, the plaintiff applies to the court for the following reliefs: B

(I) General, Aggravated and Exemplary damages.

(II) An apology in the manner and form approved by the Plaintiff to be published on the front page of the Defendant's newspaper.

(III) An undertaking by the Defendant not to publish such defamatory matters against the Plaintiff in the future. C

(IV) Interest.

(V) Costs.

(VI) Such further and other relief as this Honourable Court may deem just and expedient in the circumstances. D

[5] The full transcript of the impugned article as set out in para. 4 of the re-amended SOC reads as follows:

Butir-Butir Penerbitan Defendan Pada 09.11.2014 Bertajuk "Hebat Sangatkah Adnan" E

Sesiapa yang mendokong kuat integriti, tidak akan melatah dan emosional terhadap pendedahan media. Sebab itu Awang hairan mengapa menteri besar Pahang, Adnan Yaakob mahu menghina dan memperlekehkan Utusan Malaysia dan Mingguan Malaysia berhubung isu Cameron Highlands. F

Beliau ternyata marah dengan laporan khas Utusan tentang kebanjiran 30,000 warga asing terutama Bangladesh di daerah tersebut.

Seperti biasa, Adnan mengaitkannya dengan agenda media untuk menjatuhkan pemimpin selain mahu melariskan akhbar bagi mengelakkan syarikat akhbar rugi dan tutup. **Inilah antara cabaran media dalam memperjuangkan integriti - penyakit pemimpin politik**. G

Awang seperti tidak percaya ada pemimpin bertaraf menteri besar yang berfikir seperti itu. **Inilah masalahnya kalau sudah lama sangat sandang jawatan dan terleka dalam zon selesa sehingga takut dengan bayang-bayang sendiri. Ulat pun disangka ular**. Beliau sepatutnya belajar dengan menteri besar lain yang mengambil positif dan menjadikan laporan media sebagai peluang untuk menangani sesuatu isu dengan lebih berkesan. Ada laporan lebih panas melibatkan negeri lain tetapi menteri besarnya tidak melatah. H

I

A Agenda media dalam isu di Cameron Highlands adalah untuk keselamatan negara dan rakyat, tidak lebih daripada itu. Tiada sebarang agenda lain. Apakah kerana Utusan Malaysia dan Mingguan Malaysia mahu mengutamakan agenda ini, akhbar tersebut menjadi mangsa dan sasaran tohmahan Adnan?

B Bukan kali pertama, Adnan rakus menuding jari terhadap media. Awang selalu mendapat maklum balas termasuk daripada wartawan banyak organisasi media tentang **cara beliau yang kelihatan angkuh. Tidak boleh menerima teguran - mudah melenting**.

C **Memandangkan keangkuhannya**, Awang bagi pihak Utusan ada hak untuk menyanggah beliau. **Menggunakan kuasa politik untuk membuli media**, tidak boleh dibiarkan.

D Di Pahang, pelbagai pihak termasuk media lebih senang berurusan dengan Sultan Pahang, Sultan Ahmad Shah dan Tengku Mahkota, Tengku Abdullah **yang lebih tahu menghormati dan menjaga aib orang lain.** Benar-benar berjiwa rakyat. **Bukan itu sahaja baginda berdua bersikap budiman, terbuka dan bijak mengurus kritikan**.

Sayangnya, ia tidak terzahir kepada menteri besar. Persoalannya hebat sangatkah Adnan sehingga **kerap kali menghina dan tidak menjaga adab tutur kata sebagai seorang pemimpin?**

E Rakyat Pahang boleh menilai. Walaupun Adnan berjasa kepada negeri itu tetapi **ramai merasakan Pahang tidaklah sehebat mana di bawah pentadbirannya sejak 1999. Tiada faktor 'wow' yang boleh menjadi kebanggaan negeri. Isu kelemahan dan kepincangan tertentu di bawah pentadbiran beliau, juga jadi bahan bualan**. Ingatlah kebanyakan kita ada pekung. **Mengata orang tetapi gagal cermin prestasi sendiri**. Lihatlah

F kes penerokaan haram di hutan simpan dan tanah kerajaan di Cameron Highlands (dan banyak lagi daerah) yang sudah lama berlarutan, yang kerap mengakibatkan banjir **tetapi apa yang Adnan buat selain asyik memberi alasan**.

G **Gaya kepimpinannya juga tidak lagi sesuai** meskipun bagi penyokong Adnan, beliau masih diperlukan atas hujah karismanya yang mampu mengawal politik Pahang yang unik. Lain pula di akar umbi, yang mahukan perubahan kepimpinan. **Negeri lain sudah berubah menteri besar, Pahang masih orang sama yang rating dan popularitinya jatuh. Desas-desus menteri besar bakal diganti sudah lama berlegar**. Walaupun Adnan tentu tidak senang dengan hal tersebut tetapi Awang yakin beliau bukanlah jenis yang tidak boleh menerima realiti.

H

Lagipun Adnan pasti sudah puas duduk di kerusi menteri besar. Sebagai pemimpin politik, sesiapa pun termasuk beliau seharusnya boleh menerima sebarang kemungkinan naik, turun dalam karier politik kerana ia lumrah. Sebagai pemimpin yang bijaksana, **beliau sepatutnya sudah boleh membaca dan memahami isyarat termasuk implikasi kepada politik**

I **negeri jika tiada perubahan menteri besar. Jangar biar diri menjadi liabiliti kepada parti dan negeri**. Walaupun khabarnya, Adnan dikatakan **bergantung kepada Sultan Pahang untuk survival politiknya** namun

dalam soal menjaga kepentingan rakyat Pahang, baginda akan mengambil pendirian terbaik. Lagipun yang akan mengundi atas nama demokrasi pada pilihan raya nanti ialah rakyat.

Pada pilihan raya umum lepas, faktor Perdana Menteri, Mohd. Najib Tun Razak memainkan peranan besar kepada kejayaan Barisan Nasional (BN) di negeri itu. Rakyat Pahang lebih menghargai Najib, yang merupakan Ahli Parlimen Pekan. Tanpa mahu menafikan peranan dan kerja keras Adnan, **ramai berpendapat Pahang boleh menang lebih besar jika beliau umumkan berundur selepas PRU-13**. Setakat ini, tiada tanda Adnan mahu bersara secara sukarela, seolah-oleh tiada pemimpin lain di Pahang yang layak. Maka eloklah Awang peringatkan ungkapan Bahasa Inggeris, **Don't overstay your welcome**, yang beliau lebih arif maksudnya. (emphasis added by Plaintiff in the re-amended SOC).

Court's Decision Given On 23 July 2015 Regarding Encl. 30

[6] After considering the defendant's application, the pleadings, and the submissions and authorities of both parties, I dismissed the defendant's application with costs of RM3,000 to be paid by the defendant to the plaintiff.

Grounds For Court's Decision

The Law

[7] It is trite law that the court would only allow a plaintiff's writ and SOC to be struck out in a plain and obvious case where the claim or answer is on the face of it obviously unsustainable (see *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Berhad* [1993] 4 CLJ 7; [1993] 3 MLJ 36).

Defendant's Preliminary Issue That The Application Be Allowed Since There Is No Affidavit In Reply ("AIR") By The Plaintiff

[8] In support of the defendant's application, the defendant filed an affidavit in support ("AIS") (encl. 31). The plaintiff did not personally affirm any AIR. However, learned counsel for the plaintiff ("PC") affirmed and filed an AIR (encl. 34) on behalf of the plaintiff.

[9] Learned counsel for the defendant ("DC") objected to the admission of encl. 34 on the ground that it was not affirmed by the plaintiff and therefore should not be allowed under O. 41 r. 5(1) of the ROC since PC does not have personal knowledge of the facts of the plaintiff's case.

[10] PC then withdrew encl. 34 in order to save time and avoid unnecessary issues. Accordingly, the court struck out encl. 34.

[11] DC submitted that since there is no AIR by the plaintiff, and following the principle in *Ng Hee Thong & Anor v. Public Bank Berhad* [1995] 1 CLJ 609, in the absence of any evidence to rebut the defendant's evidence in its AIS, the plaintiff is deemed to admit all the facts averred to by the defendant. DC then prayed for an order in terms of the application.

[12] I did not allow the application based on the above preliminary issue raised by DC. This is for the reason, as submitted by PC, that the issue relied upon by the defendant for the striking out the application is whether the plaintiff has *locus standi* to institute and maintain the action against the defendant. That is purely a legal issue which can be decided based on the pleadings and the law even though there is no AIR by the plaintiff to rebut the AIS of the defendant regarding the facts.

Whether The Action Should Be Struck Out Due To The Plaintiff's Lack Of Clarity In His Pleadings Regarding His Position As Menteri Besar

[13] DC raised the issue that the plaintiff is instituting these proceedings in his official capacity as the Menteri Besar of Pahang. However, in the greater part of the plaintiff's pleadings, the plaintiff was referring to his position as "Ketua Menteri" and not "Menteri Besar".

[14] Upon a perusal of the plaintiff's pleadings, it is noted that the only instances that the plaintiff referred to his position as Menteri Besar are in the following:

(a) Para 1 and 7 k) of the plaintiff's re-amended SOC; and

(b) Para 3.1 and 10.2 of the plaintiff's reply to the defendant's defence ("reply").

[15] Other than the above, the plaintiff has, in numerous parts of his pleadings, referred to his position as "Ketua Menteri" namely, in paras 6, 7 (a), 7 (b), 7 (c), 7 (e), 7 (i) and 7 (j) of the re-amended SOC and paras 3.6 and 10.4 of the reply.

[16] There is no submission by PC on this point. In PC's averments in his AIR (encl. 34), he stated that the English translation of the plaintiff's pleadings clearly referred to the plaintiff as "Chief Minister" and that according to the 5th edn of Istilah Undang-Undang p. 30, the translation of the phrase "Chief Minister" is "Ketua Menteri" (exh. AS-1).

[17] However, since encl. 34 has been withdrawn by PC and struck out by the court, the above averments of PC cannot be relied upon.

[18] Notwithstanding that, I note that in para 1 of the re-amended SOC, the plaintiff is clear in referring to his position as the Menteri Besar. This is fortified by his other references to his position as Menteri Besar in para. 7(k) of his re-amended SOC, and para 3.1 and 10.2 of his reply. Even though the plaintiff had used both terms "Menteri Besar" and "Ketua Menteri" interchangeably in his pleadings, when such terms are read together with the full contents of the impugned article, there is no doubt that the plaintiff is actually referring to his position as Menteri Besar in his pleadings.

[19] The above defect in the plaintiff's pleadings can be cured by an amendment made subsequent to this upon the plaintiff's application. However, the inconsistencies in the plaintiff's use of the two terms "Menteri

Besar" and "Ketua Menteri" are not strong or reasonable grounds to strike out the plaintiff's claim on a mere technicality of semantics and nomenclature.

[20] I therefore did not allow the defendant's application on this ground as well.

Whether The Plaintiff Has Locus Standi To Institute And Maintain This Action ("Locus Standi")

[21] DC submitted that the plaintiff can only institute and maintain this action for defamation if the plaintiff is personally suing the defendant. However, the plaintiff, as can be seen from his pleadings, is suing the defendant in his official capacity as Menteri Besar of Pahang.

[22] DC cited the following instances in the plaintiff's pleadings and submitted that these averments show clearly that the plaintiff is suing the defendant in regard to the plaintiff's administration of the State Government of Pahang as the Menteri Besar:

In the re-amended SOC

> 6. Plaintif seterusnya menegaskan bahawa isi kandungan artikel yang dinyatakan tersebut seperti yang khasnya ditekankan dan secara amnya, adalah memfitnah Plaintif dengan serius apabila mengambil kira kedudukan dan reputasi kukuh pihak Plaintif sebagai Pemimpin Negara terutamanya sebagai Ketua Menteri Negeri Pahang yang memegang jawatan sekian lama.
>
> 7. Plaintif seterusnya mendakwa bahawa tuduhan-tuduhan yang keterlaluan dan tidak berasas yang diterbitkan oleh Defendan dalam artikel yang dinyatakan di atas adalah memfitnah Plaintif dengan mengambil kira makna biasa dan semula jadi yang diperolehi daripadanya dan/atau oleh innuendo dan yang bermaksud, bermakna dan yang telah difahami untuk membawa maksud, antara lain bahawa Plaintif:
>
> (a) Tidak mempunyai urusan sebagai seorang Ketua Negara, terutamanya Ketua Menteri bagi Negeri Pahang, kerana Plaintif tidak mempunyai apa-apa bentuk integriti.
>
> (b) Telah gagal teruk dalam menjalankan tugas beliau sebagai Ketua Menteri bagi Negeri Pahang dan terus mengabaikan tanggungwabnya kepada rakyat negeri itu.
>
> (c) Telah terlalu lama dalam jawatannya sebagai Ketua Menteri bagi Negeri Pahang dan telah hidup lebih lama atas kepentingan beliau.
>
> (d) Adalah seorang yang pura-pura dan yang mengabaikan tugasnya kepada rakyat Negeri Pahang dan terus berbuat demikian.
>
> (e) Adalah tidak sesuai untuk memegang jawatan sebagai Ketua Menteri bagi Negeri Pahang kerana Plaintif tidak dapat menerima kritikan yang tulen dan mempunyai kecenderungan untuk memaparkan keangkuhan dan kelancangan beliau.

A (f) ...

(g) ...

(h) ...

(i) Telah gagal untuk mencapai kemajuan dalam pembangunan Negeri
B Pahang sepanjang tempoh perkhidmatan beliau sebagai Ketua Menteri.

(j) Adalah secara umumnya tidak popular dengan rakyat negeri Pahang kerana ketidakcekapan dan kegagalan yang hina sebagai seorang Ketua Menteri.

C (k) ...

8. Plaintif menegaskan bahawa akibat kandungan artikel berunsur fitnah yang dinyatakan seperti yang diterbitkan oleh Defendan, reputasi dan nama baik Plaintif, terutamanya sebagai Ketua Negara, telah tercemar akibatnya kedudukan beliau dalam masyarakat dan reputasi sebagai
D seorang ahli politik yang mulia telah terjejas dengan teruknya;

In the Reply

31. Defendan bergantung kepada kejadian tanah runtuh di Cameron Highlands sebagai kaitan langsung dengan kelalaian Plaintif sebagai Menteri Besar Pahang (yang mana dinafikan), apabila Defendan
E mengetahui atau sepatutnya mengetahui bahawa tanah runtuh ini adalah disebabkan oleh faktor semula jadi dan tidak disebabkan oleh apa-apa ketidakcekapan pihak Plaintif sendiri (yang dinafikan).

3.2 Defendan mendakwa bahawa Plaintif, sebagai ketua Pentadbiran Negeri Pahang, gagal untuk menggunakan kuasa kerajaan negeri yang
F tersedia ada dengan berkesan, mungkinnya untuk mengelakkan bencana alam seperti yang dirujukkan telah berlaku di Cameron Highlands, tanpa memberikan butir-butir mengenai kuasa-kuasa yang tidak digunakan (jika ada) dan bagaimana mereka harus telah menggunakannya.

3.3. Defendan mendakwa bahawa Pentadbiran Negeri Pahang, yang diketuai oleh Plaintif, adalah entah bagaimana dikaitkan dengan
G kehadiran pekerja pendatang asing (sah atau tidak) di Cameron Highlands, yang mana defendan selanjutnya mendakwa, telah membawa kepada bencana alam berkenaan, (di mana Plaintif memerlukan bukti yang kukuh), tetapi gagal untuk menjelaskan bagaimana isu ini dalam apa-apa cara pun ada berkaitan dengan komen yang dipertikaikan itu diterbitkan.

H ...

3.6 Defendan selanjutnya membuat andaian palsu bahawa Pentadbiran Negeri Pahang yang dikendalikan oleh Plaintif sebagai Ketua Menteri adalah dalam beberapa cara kurang, tanpa memberikan butir-butir. Defendan seterusnya membayangkan bahawa andaian palsu ini berupaya
I menyokong alasan kepentingan awam untuk penerbitan yang dipertikaikan.

...

10.4 Agenda Defendan untuk mencemarkan imej Plaintif telah selanjutnya ditunjukkan oleh kandungan artikel Defendan yang berkenaan di mana kedudukan Plaintif sebagai Ketua Menteri bagi Negeri Pahang telah disoal dengan tegasnya.

[23] DC relied on the House of Lords decision in *Derbyshire County Council v. Times Newspapers Ltd and Others* [1993] 1 All ER 1011 which laid down the principle that a local authority or other government body cannot maintain an action for defamation. He cited Lord Keith's statements as follows:

At p. 1017 para j of the judgment

> It is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech.;

At p. 1020 para d of the judgment

> A publication attacking the activities of the authority will necessarily attack on the body of councillors which represents the controlling party, or on the executives who carry on the day-to-day management of its affairs. If the individual reputation of any of these is wrongly impaired by the publication any of these can himself bring proceedings for defamation.

[24] DC further submitted that the *Derbyshire*'s case does not prohibit an individual holding public office to sue for defamation. *Derbyshire (supra)* only prohibits an elected representative from suing in his official capacity.

[25] DC then submitted that in the present case, the plaintiff is suing in his official capacity as the Menteri Besar of Pahang. Based on the principles in *Derbyshire (supra)*, the plaintiff in his capacity as the Menteri Besar of Pahang lacks *locus standi* in initiating and maintaining this suit on the ground that the plaintiff is an elected representative which may be subjected to public criticism.

[26] DC also relied heavily on the case of *Kerajaan Negeri Terengganu & Ors. v. Dr Syed Azman Syed Ahmad Nawawi & Ors (No. 2)* [2013] 1 CLJ 124 where I had struck out the second plaintiff's case for defamation, *inter alia*, on the following grounds:

(a) The second plaintiff in that suit was suing in his official capacity as the Menteri Besar of the State of Terengganu;

(b) This can be seen from the heading of the suit where the second plaintiff was cited as "Dato' Seri Haji Ahmad bin Said (Menteri Besar Terengganu)".

(c) Other than para. 2, the remaining averments in the SOC describe the second plaintiff in his official capacity as Menteri Besar.

[27] I agree with DC's submission that the manner of wording the plaintiff's pleadings in the present case is somewhat similar to the one in the *Kerajaan Negeri Terengganu* case *(supra)*. It is observed that in both cases, the

plaintiff's pleadings, to a large extent, aver that the alleged defamation by the defendant is in respect of the discharge of the plaintiff's duties as the Menteri Besar of the State.

[28] However, one distinguishing factor between the two cases is that in the *Kerajaan Negeri Terengganu*'s case, in the heading or citation ("citation") of the second plaintiff as a party, the second plaintiff's name is cited with his official position as follows:

> Dato' Seri Haji Ahmad Bin Said
>
> (Menteri Besar Terengganu).

[29] However, in the present case, only the plaintiff's name is cited, without his official position as the Menteri Besar of Pahang. This shows clearly that the plaintiff is suing in his personal capacity, and not in his official capacity as the Menteri Besar of Pahang.

[30] I further considered the submission of PC that the plaintiff has instituted this action in his personal capacity, and the position of Menteri Besar is his calling. For any defamation action, the plaintiff has to show that he has a reputation which has been tarnished and he has suffered damages. It so happens that the plaintiff is the Menteri Besar.

[31] PC drew the court's attention to the fact that in the impugned article, the plaintiff is referred to as "Adnan" or "beliau" at least 20 times. He submitted that this is sufficiently indicative that the article refers to the plaintiff personally.

[32] Much as I would like to agree with the major part of the submissions of DC, I informed both parties of the fact that my decision in the *Kerajaan Negeri Terengganu* case was reversed on 14 January 2013 by the Court of Appeal on appeal by the second plaintiff in No. Rayuan W-01-(IM)(NCVC)-369-08-2012. There is no written judgment by the Court of Appeal giving the grounds for its decision. However, the brief decision of the Court of Appeal dated 14 January 2013 states as follows:

> Rayuan dibenarkan. Kos RM10,000.00. Kes dikembalikan ke Mahkamah Tinggi Kuala Lumpur untuk pengurusan kes pada 23.1.2013. Perbicaraan penuh di hadapan Hakim yang lain. Deposit dikembalikan.

[33] From the above decision, it is clear that the Court of Appeal is of the view that notwithstanding the second plaintiff's averments in his pleadings regarding the alleged defamation of his reputation whilst he was in the discharge of his duties as the Menteri Besar of Terengganu, and even though there is an express statement regarding the plaintiff's position as "Menteri Besar Terengganu" in the citation of the case, the second plaintiff was suing in his personal capacity and therefore had *locus standi* to maintain the action.

[34] Applying the above decision of the Court of Appeal to the present case, and after considering the fact that the plaintiff is cited as "Adnan" or "beliau" for about 20 times in the impugned article, and fortified by the fact that the plaintiff only cited his name as plaintiff, and not with his official position as Menteri Besar of Pahang, I am satisfied that the plaintiff is suing the defendant in his personal capacity, and not in his official capacity as the Menteri Besar of Pahang.

[35] I therefore held that the plaintiff has *locus standi* to institute and maintain this action.

[36] On the whole, I find that there is nothing specific that has been shown to the court by the defendant that this action should be struck out under O. 18 r. 19(1)(b), (c) and/or (d) of the ROC on the grounds that it is scandalous, frivolous or vexatious, may prejudice embarrass or delay the fair trial of the action, or it is otherwise an abuse of the process of the court.

[37] I therefore dismissed the defendant's application.

Defendant's Oral Application For Stay

[38] DC then made an oral application for stay of the proceedings pending the defendant's appeal to the Court of Appeal on my decision regarding encl. 30. DC tendered to the court a letter from the defendant dated 22 July 2015 confirming the defendant's instructions to appeal on the matter. DC informed the court that the defendant's deponent for its AIS of encl. 30 was waiting outside my chambers should I wish to see him.

[39] DC submitted that there are special circumstances to warrant a stay of the proceedings considering that the trial would be on 27 July 2015 ie, four days from the date of the decision. In the event that the court finds in favour of the plaintiff at the end of the trial, the defendant would still appeal therefrom. The defendant would then be caught in a Gordian knot. DC submitted that the plaintiff is also praying for an apology to be published by the defendant, and if judgment is given to the plaintiff after the trial, and the apology is published, it would be irreversible should the defendant later succeed in its appeal.

[40] PC objected to a stay of proceedings on the ground that the plaintiff's lead counsel, Mr Manjeet Singh Dhillon, is here from the United Kingdom to attend to the trial. PC was prepared to give an undertaking that the plaintiff would not require the defendant to publish the apology in the event that the plaintiff succeeds in the trial, pending the outcome of the defendant's appeal.

[41] In the interest of justice, I decided to grant a stay of proceedings. The special circumstances are that once the trial commences four days from then ie, on 27 July 2015, then as is the usual practice, I would fix more days in

between in order to complete the trial expeditiously. There is therefore a strong possibility that I would be handing down a judgment on the plaintiff's claim within a short period which may be before the outcome of the defendant's appeal to the Court of Appeal. That would render the defendant's appeal nugatory and academic.

[42] For the above reasons, I therefore ordered accordingly.